



SAMOA

ADMINISTRATION ACT 1975

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ADMINISTRATION ACT 1975

1975

No. 23

AN ACT to consolidate the law relating to the administration of the estates of deceased persons.

[Assent and commencement date: 23 December 1975]

**PART 1
PRELIMINARY**

1. Short title – This Act may be cited as the Administration Act 1975.

2. Interpretation – (1) In this Act, unless the context otherwise requires:

“administration” includes:

- (a) probate of the will of a deceased person; and
- (b) letters of administration of the estate of a deceased person, granted with or without a will annexed, and
- (c) for the Public Trustee, an order to administer, and an election to administer;

“administrator” means a person to whom administration is granted;

“Court” means the Supreme Court, and includes a Judge of that Court;

“estate” means real and personal property of every kind;

“intestate” includes a person who leaves a will but dies intestate as to some beneficial interest in his or her real or personal estate;

“personal chattels”, in relation to a person who has died:

- (a) means all articles of household or personal use or ornament which were owned by the person, as the legal or beneficial owner, immediately before the person’s death; but
- (b) does not include any chattels used exclusively or principally at the death of the intestate for business purposes, or money, or securities for money;

“Registrar” means the Registrar of the Supreme Court;

“rules” means rules made under this Act;

“securities” includes stocks, funds, shares, and convertible notes;

“will” includes a codicil.

(2) References to a child or issue living at the death of a person include a child or issue who is conceived but not born at the death but who is subsequently born alive.

3. Act to bind Government – This Act binds the Government.

4. Application – Except as otherwise provided in this Act, this Act applies in every case, whether the death occurred before or after the commencement of this Act.

PART 1A ADMINISTRATION BY ADMINISTRATOR

Division 1 – Grant of Administration

5. Probate jurisdiction of Supreme Court – (1) The Supreme Court shall continue to have jurisdiction and authority in relation to the granting and revoking of probate of wills and letters of administration with or without a will annexed of the estates of deceased persons, and in regard to the hearing and determining of proceedings relating to testamentary matters and matters relating to the estates of deceased persons.

(2) Without restricting subsection (1) or any other enactment, the Court has jurisdiction to grant probate or letters of administration in respect of a deceased person, whether or not the deceased person left an estate in Samoa or elsewhere, and whether or not the person to whom the grant is made is in Samoa.

6. Discretion of Court as to person to whom administration is granted – In granting letters of administration with or without a will annexed, or an order to administer with or without a will annexed, in respect of the estate of a deceased person or apart of the estate, the Court shall have regard to the rights of all persons interested in the estate of the deceased person or the proceeds of sale of the estate, and, in particular, administration with a will annexed may be granted to a devisee or legatee, and any such administration may be limited in a way the Court thinks fit:

PROVIDED THAT where the deceased died wholly intestate as to his or her estate, administration must be granted to one or more persons beneficially interested in the estate of the deceased, if they make an application for the purpose.

7. Administration with will annexed – If the Court grants administration of the estate of a deceased person with the will annexed, the will of the deceased must be performed and observed in like manner as if probate of the will had been granted to an executor.

8. Cesser of right of executor to prove – (1) If a person appointed executor by a will:

- (a) survives the testator but dies without having been granted probate of the will; or
- (b) is cited to take out probate of the will and does not appear to the citation; or
- (c) renounces probate of the will,–

the person's rights in respect of the executorship shall wholly cease, and the representation to the testator and the administration of the testator's estate shall devolve and be committed as if that person had not been appointed executor.

(2) If a person is appointed by a will to be both executor and trustee and the person's rights to the executorship wholly cease under subsection (1), the person's rights to the trusteeship also wholly cease and the trusteeship devolves or to be determined as if the person had not been appointed as trustee:

PROVIDED THAT nothing in this subsection prevents the person's subsequent appointment as trustee.

9. Executor of executor represents original testator– (1)

An executor of a sole or last surviving executor of a testator is to be the executor of that testator:

PROVIDED THAT for the purpose of the forgoing provisions of this subsection a person who does not prove the will of his or her testator is taken not to be an executor despite the person's appointment as such by the will.

(2) So long as the chain of representation is unbroken, the last executor in the chain is the executor of a preceding testator.

(3) The chain of representation is broken by:

- (a) the failure to leave a will; or
 - (b) the failure of a testator to appoint an executor; or
 - (c) the failure to obtain probate of a will.
- (4) A person in the chain of representation to a testator:
- (a) has the same rights in respect of the estate of that testator as the original executor would have had if living; and
 - (b) is, to the extent to which the estate of that testator has come to the person's hands, answerable as if the person were an original executor.

10. Notice to be sent to Public Trustee of applications for administration – Upon the filing in the office of the Supreme Court of an application by an applicant other than the Public Trustee for administration of the estate of a deceased person, the Registrar shall give to the Public Trustee a notice stating:

- (a) the date of the filing, and the date (if any) of the hearing;
- (b) the full name of the deceased;
- (c) whether the deceased person died testate or intestate, and, if testate the date of the will.

11. Proceedings where executor neglects to prove will –

(1) If an executor named in a will neglects or refuses to prove the will, or to renounce probate thereof, within 3 months from the death of the testator, the Court may, upon the application of:

- (a) any other executor or executors; or
- (b) a person interested in the estate; or
- (c) the Public Trustee; or
- (d) a creditor of the testator,–

grant an *order nisi* calling upon the executor who so neglects or refuses to show cause why probate of the will should not be granted to that executor alone or with any other executor or executors or, in the alternative, why administration should not be granted to the applicant or some other person.

(2) Upon proof of service of the order, or upon the Court dispensing with service of the order, if the executor who is so called on does not appear or upon cause being shown, the Court may make such order for the administration of the estate, and as to costs, as it thinks just.

12. Discharge or removal of administrator – (1) If:

- (a) an administrator—
 - (i) is absent from Samoa for 12 months without leaving a lawful attorney, or
 - (ii) desires to be discharged from the office of administrator; or
 - (iii) becomes incapable of acting as administrator or unfit to so act; or
- (b) it becomes expedient to discharge or remove an administrator, –

the Court may discharge or remove that administrator, and may if it thinks fit appoint a person to be administrator in his or her place, on such terms and conditions in all respect as the Court thinks fit.

(2) The administrator so removed or discharged shall, from the date of that order, cease to be liable for acts and things done after that date.

(3) Upon an administrator being discharged or removed under subsection (1) (whether or not any other administrator is appointed), all the estate and rights of the previous administrator or administrators which were vested in him or her or them as such shall become and be vested in the continuing administrator or administrators (including an administrator appointed under subsection (1) who shall have the same powers, authorities, discretion and duties, and may in all respect act, as if he, she or they had been originally appointed as the administrator or administrators.

(4) This section, with all necessary modification, extends to the case where an administrator dies, and the powers and authorities conferred may be exercised and shall take effect accordingly.

(5) Nothing in this section restricts section 8.

Division 2 – Administering of Estates

13. Executor not to act while another administrator is in office – Subject to this Act and of any other Act, if administration has been granted on any part of the estate of a deceased person, and is not for the time being suspended, no

person, other than the administrator of that part of the estate, has power to bring an action or otherwise act as administrator of the deceased person in respect of the estate comprised in or affected by the grant until the grant has been recalled or revoked.

14. Estate to vest in administrator – (1) Immediately upon the grant of administration of the estate of a deceased person, all the estate then un-administered of that deceased person, whether held by the deceased person beneficially or held by the deceased person in trust, shall vest in the administrator to whom the administration is granted for all the estate therein of that deceased person:

PROVIDED THAT nothing in this section affects the earlier vesting in an executor by operation of law.

(2) The title of an administrator to a part of the estate of a deceased person, whether he or she has died before or after the commencement of this Act, shall relate back to and is taken to have arisen immediately upon the death of the deceased person, as if there had been no interval of time between the death and the grant of administration.

(3) If there are concurrently more administrators than 1 of a part of the estate that part shall vest in them as joint tenants.

15. How estate to be held by administrator – Subject to this Act, the administrator shall hold:

- (a) the estate of a person who dies or has died either before or after the commencement of this Act leaving a will according to the trusts and dispositions of the will, so far as the will affects that estate;
- (b) the estate of a person who dies after the commencement of this Act intestate as to that estate according to Part 3;
- (c) the estate of a person who has died before the commencement of this Act intestate as to that estate according to the enactments and law which would have applied thereto if this Act had not been passed.

16. Estate to be assets for payment of duties or fees and debts – The whole of the estate of a deceased person are assets in the hands of his or her administrator for the payment of all duties and fees payable under an Act imposing or charging duties or fees on the estates of deceased persons, and for the payment in the ordinary course of administration of his or her debts and of debts properly incurred by his or her administrator, and for those purposes the administrator may, in as full and effectual a manner in law as the testator or intestate could have done in his or her lifetime, sell, lease (with or without an optional or compulsory purchasing clause), or mortgage (with or without a power of sale), the estate, or a part thereof.

17. Power of sale on intestacy – (1) On the death of a person intestate as to any real or personal estate, the person's administrator has the power to sell that real estate and to call in, sell, and convert into money such part of that personal estate as may not consist of money, with power to postpone the sale, calling in, and conversion for such a period as the administration, without being liable to account, may think proper, and so that, unless required for purposes of administration owing to want of other assets, personal chattels be not sold under this section except for special reason.

(2) This section has effect despite that the administrator has ceased to hold the real or personal estate as administrator and holds it as trustee.

(3) If the deceased leaves a will this section has effect, subject to the provisions contained in the will.

18. Debts under deeds and simple contracts to stand in equal degree – Subject to this Act and of any other Act, in the administration of the estate of a person who has died, whether before or after the commencement of this Act, no debt or liability of the person is to be entitled to a priority or preference by reason merely that it arises under a bond, deed, or instrument under seal; but all the creditors of that person is to be treated as standing in equal degree and be paid accordingly out of the assets of the deceased person, whether those assets are legal or equitable:

PROVIDED THAT nothing in this section prejudices or affects a lien, charge, mortgage, or other security which a creditor may hold or be entitled to for payment of his or her debt or liability.

19. Charges on property of deceased to be paid primarily out of the property charged – (1) If:

- (a) a person dies possessed of, or entitled to, or under a general power of appointment by his or her will disposes of, an interest in property; or
- (b) an interest in property passes by survivorship on the death of a person; and
- (c) at the time of his or her death, the interest is charged with the payment of money, whether by way of mortgage, charge, or otherwise; and
- (d) the deceased has not by will, deed, or other document signified a contrary or other intention,—

the interest so charged shall, as between the different persons claiming through the deceased, be primarily liable for payment of all amounts charged thereon; and a part of the interest, according to its value, shall bear a proportionate part of the amounts charged on the whole thereof.

(2) Such a contrary or other intention is taken not to be signified:

- (a) by a general direction for payment of debts or of all the debts of the testator out of his or her personal estate, or the residuary real and personal estate, or the residuary real estate, or the residuary personal estate; or
- (b) by a charge of debts upon any such estate, unless that intention is further signified by words expressly or by necessary implication referring to all or some part of the charge on the interest in property.

(3) Nothing in this section affects the right of a person entitled to the payment with which the interest in property is charged to obtain payment or satisfaction thereof out of the other assets of the estate or otherwise.

20. Liability of specific devise or bequest where estate primarily liable is insufficient – If a testator’s estate primarily liable for the payment of his or her debts is insufficient for that purpose, each of his or her specifically devised or bequeathed estates (if more than 1) is liable to make good the deficiency, in the proportion that the value of each of those estates bears to the aggregate value of the specifically devised or bequeathed estates of the testator.

21. Rights and liabilities of administrator – A person to whom administration of the estate of a deceased person is granted, other than an executor, has, subject to the limitations contained in the grant, the same rights and liabilities and be accountable in like manner as if the person were the executor of the deceased.

22. Administrator maybe required exhibiting inventory – An administrator shall, when required by the Court so to do, exhibit on oath in the Court a true and perfect inventory and account of the estate of the deceased, and the Court has the power to require administrators to bring in inventories.

23. Protection of persons acting on administration – An administrator or person who:

- (a) makes any payment or disposition or assumes any liability, or who
- (b) permits any payment or disposition to be made, or who
- (c) does an act, or who permits an act to be done, in good faith under an administration,–

has, despite a defect or circumstances whatsoever affecting the validity of the administration or its subsequent revocation, the same indemnity and protection in so doing and in respect of all commission and remuneration earned by him or her in so doing, as he or she would if the administration were valid and not revoked.

24. Liability of person fraudulently obtaining or retaining estate of deceased – If a person other than the administrator, to the defrauding of creditors or without full

valuable consideration, obtains or receives or holds a part of the estate of a deceased person or effects the release of a debt or liability due to the estate of the deceased, that person shall be charged as executor in his or her own wrong to the extent of the estate received or coming into the person's hands, or the debt or liability released, after deducting:

- (a) a debt for valuable consideration and without fraud due to the person from the deceased person at the time of his or her death which might properly be retained by an administrator; and
- (b) payment made by the person which might properly be made by an administrator.

Division 3 – Powers and Procedure of Court

25. Direction to executor to prove or renounce and do such things related to testamentary matters and estates of a deceased – The Court may direct a person named as executor in a will to prove or renounce probate of the will, and (subject to this Act and any other enactment and the rules) to do such other things as it thinks fit concerning the granting and revocation of administration, and the hearing and determination of proceedings relating to testamentary matters and matters relating to the estates of deceased persons.

26. Production of instruments purporting to be testamentary – The Court may:

- (a) whether a suit or other proceeding is or is not pending with respect to an administration, order a person to produce a paper or writing, being or purporting to be testamentary, which may be shown to be in the possession or under the control of that person; and
- (b) if it is not shown that the paper or writing is in the possession or under the control of a person, but it appears that there are reasonable grounds for believing that the person has knowledge of the paper or writing, direct that person to attend for the purpose of being examined in open Court, respecting the same,–

and that person is bound to answer any questions and, if so ordered, to produce and bring in the paper or writing, and is subject to the like process of contempt in case of default in not attending or in not answering the questions, or not bringing in the paper or writing, as the person would have been subject to in case the person had been a party to a suit or other proceedings in the Court, and had made any default; and the costs of the suit or proceeding are to be in the discretion of the Court.

27. Practice of Court in its administration jurisdiction –

The practice of the Court in regard to administration shall, except where otherwise provided by this Act or by the rules, be regulated, so far as the circumstances of the case will admit, by the practice of the Court.

28. Form of order to Public Trustee – When the Court grants an order to the Public Trustee (either alone or together with any other person or persons) to administer the estate of a deceased person, the order must be in the form in the First Schedule or in any other form or forms as may be prescribed by regulation.

29. Power to make rules – The power to make rules of Court includes power to make rules:

- (a) prescribing the forms of administration;
- (b) prescribing the practice in obtaining a grant of administration, and the procedure and practice of the Court and the duties of the Registrar;
- (c) regulating the procedure and practice of the Court with respect to non-contentious or common form probate business;
- (d) regulating the procedure and practice of the Court with respect to contentious probate business;
- (e) regulating the practice and procedure of the Court in relation to the resealing of probates or letters of administration, and in particular for the purpose of imposing upon persons applying there under for the resealing of probates or letters of administration, or relieving any such persons from, any requirements that may be imposed

upon persons applying to the Supreme Court for original grants of probate or letters of administration;

- (f) prescribing orders of priority among applicants for administration which shall apply unless the Court in special circumstances otherwise directs; and
- (g) generally for carrying this Act into effect.

Division 4 – Caveats

30. Caveat may be lodged – (1) A person may lodge with the Registrar a caveat against an application for administration at any time previous to the granting of administration, and the caveat shall set forth the name of the person lodging it, and an address within Samoa at which notices may be served on the person.

(2) The caveat shall, unless application for administration is sooner made, lapse upon the expiration of 1 year from the date of the lodging of the caveat.

(3) The caveat may be withdrawn by the caveator at any time by notice in writing lodged with the Registrar and a copy of the notice must be served on a person who has applied for administration or to whom an order nisi has been granted.

(4) Nothing in this section prevents a person who has lodged a caveat from lodging a subsequent caveat, whether or not a caveat previously lodged has lapsed or been withdrawn.

31. Where a caveat lodged, Court may grant order nisi – If a caveat has been lodged and has neither lapsed nor been withdrawn, the following provisions apply:

- (a) the Court may, upon application on behalf of the person applying for administration, supported by affidavits upon which, if there had been no caveat, administration would have been granted, make an order *nisi* for the grant of administration to the person applying, and the order shall name a time and place for showing cause against the same, and the Court may enlarge any such order;

- (b) the order *nisi*, and the order enlarging the same, is served on the caveator by delivering a copy of the same at the address mentioned in his or her caveat;
- (c) if before the day named in the order *nisi* or the day to which the order is enlarged the caveat is withdrawn, the order *nisi* may be made absolute at any time thereafter;
- (d) in any case to which paragraph (c) does not apply, if on the day named in the order *nisi*, or on the day to which the order is enlarged, the caveator does not appear, the order *nisi* may be made absolute, upon an affidavit of service; but if the caveator appears, the hearing shall be conducted in the same manner as nearly as may be as in an ordinary action, and the Court may order—
 - (i) that the order *nisi* be made absolute or discharged; or
 - (ii) that the application for administration be made in solemn form,and an order made under subparagraph (i) or (ii) may be with or without costs, as may be just, and, if the Court so directs, those costs may be paid out of the estate;
- (e) upon the hearing of the order *nisi* the parties may, subject to the rules, verify their cases in whole or in part by affidavit, but so that the deponent in every such affidavit shall, on the application of the opposite party, be subject to be cross-examined by or on behalf of the opposite party orally in open Court, and after cross-examination may be re-examined orally in open Court by or on behalf of the party by whom the affidavit was filed;
- (f) in any case where a caveat is lodged by the Public Trustee, the Court may, if it thinks fit, order costs to be paid to the Public Trustee out of the estate, whether the order *nisi* is discharged or not.

Division 5 – Miscellaneous Provisions

32. Administration not to be granted to companies other than authorised companies – No grant of probate of the will of a deceased person or letters of administration of the estate of a deceased person, either with or without a will annexed, must be made to a company unless the company is expressly authorised by an Act of Parliament to apply for and obtain the grant.

33. Devolution of loan stock without administration – (1) Where a person has died, whether before or after the commencement of this section, and at the time of his or her death the person was the registered holder of government stock of a nominal value not exceeding \$1,000, the Registrar of Stock may register as holder of the stock a person who proves:

- (a) that the registered holder has died and administration of the holder's estate has not been obtained in Samoa; and
- (b) that he or she is either—
 - (i) beneficially entitled to the stock under the will or on the intestacy of the deceased stockholder; or
 - (ii) entitled to obtain in Samoa, administration of the estate of the deceased stockholder.

(2) In this section, “government stock” means any stock issued by or under the authority of the Government by virtue of an Act.

34. Payment without administration – (1) In the event of the death of a person to whom a sum of money not exceeding \$1,000 is payable by a provident or superannuation fund, a society, a bank, an employer of the deceased person at or within 6 months before the date of his or her death, or the Government respectively, whether the death occurred before or after the commencement of this section, it is lawful, without requiring administration of the estate of that deceased person to be obtained in Samoa, and on receiving such evidence as it considers satisfactory that the person has died and that administration of his or her estate has not been obtained in

Samoa, to pay the sum or apart thereof to any of the following persons:

- (a) the widow, widower, or children of the deceased person;
- (b) the persons beneficially entitled to the estate of the deceased person under the will or on the intestacy of that person;
- (c) a person appearing to be entitled to obtain administration of the estate of the deceased person in Samoa;
- (d) a person related by blood or marriage to the deceased person who undertakes to maintain the children of that person who are minors or any of them;
- (e) a person who has the custody and control of any of the children of the deceased person who are minors:

PROVIDED THAT no payment is made to a person unless he or she applies for or consents to receive that payment.

(2) It is lawful, out of the Government money to which subsection (1) applies, to pay the funeral expenses of a deceased person, or to refund the amount of those expenses to a person who has paid them, in any case where no person has applied for or consented to receive payment of the money under subsection (1).

(3) If money is payable by a bank in the event of the death of a person and comprises money in a separate investment account and also other money, subsections (1) and (2) apply separately to the amount of money in the investment account and to the amount of other money as if each such amount was the only amount payable by the bank in the event of the death of that person.

(4) If, by virtue of a policy or policies of insurance within the meaning of an enactment relating to life insurance, a sum of money not exceeding \$1,000 (including profits but not including any money that may be payable to or deductible by the company liable under the policy or policies) is payable to the administrator of a deceased person, whether before or after the commencement of this section, it is lawful for the company, without requiring administration of the estate of the deceased

person to be obtained in Samoa, and upon receiving such evidence as it considers satisfactory that the person has died and that administration of his or her estate has not been obtained in Samoa, to make payment of the sum or apart thereof to any of the persons to whom payment may be made under subsection (1)(a) to (e).

(5) A payment made in good faith under this section to a person to whom the maker of the payment has reasonable grounds to believe that payment may be made under this section is valid against all persons whomsoever, and the maker of the payment is absolutely discharged from all liability in respect of money paid by him or her under this section.

(6) A person to whom money is paid under this section is liable to apply the money in due course of administration, and the maker of the payment may, if he or she thinks fit, without being liable to see to the application of the money, require any such person to give sufficient undertakings, by bond or otherwise, that the money so paid will be so applied.

35. Saving – Nothing in section 34 prevents a person to whom the money to which that section applies or apart thereof ought to have been paid from pursuing and exercising a remedy for recovery thereof against the person or persons to whom the money has been paid.

36. Other Acts providing for payment without administration not affected – Nothing in this Act affects the powers of a person or body to make payment to, or register a person to be, the owner of any property in accordance with an enactment in force authorising the payment of money belonging to the estate of a deceased person without requiring administration of the estate to be obtained.

PART 2

ADMINISTRATION GRANTED OUT OF SAMOA

37. Interpretation – (1) In this Part, “probate or letters of administration” includes an exemplification of any probate or letters of administration, or a duplicate thereof sealed with the seal of the Court granting the same, or a copy thereof certified

as correct by or under the authority of the Court granting the same, and also includes an exemplification or a copy certified by or under the authority of a Court, or a duplicate sealed under the seal of a Court, of an instrument which is filed in or issued out of that Court and which within the jurisdiction of that Court operates to make a person the administrator of any property of a deceased person as if probate or letters of administration had been granted to him or her by that Court.

(2) The filing in or the issuing out of a Court of an instrument which operates to make a person an administrator as aforesaid is taken to be equivalent to the granting of probate or letters of administration by that Court to that person.

38. Estate of person dying abroad not to vest without administration obtained in Samoa – (1) Estate in Samoa belonging to a person who dies abroad shall not vest in a person under a bequest or devise, or under an intestacy, or by inheritance, until administration of that estate is obtained in Samoa: or, if probate or letters of administration of the estate have been granted in a place out of Samoa, unless the probate or letters of administration are resealed in Samoa as hereinafter provided.

(2) Upon the estate in Samoa becoming legally vested under this section, the legal estate therein shall vest as from the time of the death of the person from whom it is obtained.

(3) This section does not restrict this Act or any other enactment relating to the payment or devolution of an estate without administration.

39. Resealing of probate or letters of administration – (1) If any probate or letters of administration granted by a competent court in any other country is produced to and a copy thereof deposited with the Registrar of the Supreme Court, the probate or letters of administration may be sealed with the seal of the Supreme Court, and shall thereupon have the like force and effect and have the same operation in Samoa, and an executor and administrator there under shall perform the same duties and be subject to the same liabilities, as if the probate or letters of administration had been originally granted by the Supreme Court.

(2) Nothing in this section prevents the Court from making an independent grant of administration in Samoa.

40. Seal not to be affixed till fees are paid – The seal of the Supreme Court shall not be affixed to any probate or letters of administration granted in a country so as to give operation thereto as if the grant had been made by the Supreme Court, until all such fees have been paid as would have been payable if the probate or letters of administration had been originally granted by the Supreme Court.

41. No probate or letters of administration granted out of Samoa to be evidence unless resealed – (1) Probate or letters of administration granted in a place out of Samoa shall not be received in evidence of the title of a person to an estate in Samoa as hereinbefore provided.

(2) This section does not affect the provisions of this Act or any other enactment relating to the payment or devolution of an estate without administration.

PART 3 DISTRIBUTION OF INTESTATE ESTATES

42. Application of this Part – This Part does not apply if the death occurred before the commencement of this Act, and the estate of a person who died intestate before the commencement of this Act must be distributed in accordance with the enactments and law in force at the death of that person.

43. Abolition of escheat – There must be no escheat to the Government for want of heirs or successors.

44. Succession to real and personal estate on intestacy – (1) If a person dies intestate as to any real or personal estate, that estate must be distributed in the manner or be held on the trusts mentioned in this section, namely:

- (a) if the intestate leaves a husband or wife, the surviving husband or wife shall take the personal chattels absolutely, and, in addition, the residue of the estate shall stand charged with the

payment of a sum of \$5,000 to the surviving husband or wife with interest thereon from the date of the death until paid or appropriated, at the rate of 5% per annum, and, subject to providing for that sum and the interest thereon, the residue of the estate shall be held—

- (i) if the intestate leaves issue, in trust as to $\frac{1}{3}$ for the surviving husband or wife absolutely and as to the other $\frac{2}{3}$ on the statutory trusts for the issue of the intestate;
 - (ii) if the intestate leaves no issue, in trust as to $\frac{2}{3}$ for the surviving husband or wife absolutely, and as to the other $\frac{1}{3}$ if the intestate leaves both parents, in trust for the father and mother in equal shares absolutely or, the intestate leaves only one parent, in trust for the surviving father or mother absolutely;
 - (iii) if the intestate leaves no issue or parent, in trust for the surviving husband or wife absolutely;
- (b) if the intestate leaves issue but no husband or wife, the estate shall be held on the statutory trusts for the issue of the intestate;
 - (c) if the intestate leaves no husband or wife or issue but a parent or parents, the estate shall be held in trust or the parents in equal shares if they both survive the intestate but if only one of them survives the intestate for that one;
 - (d) if the intestate leaves no husband or wife or issue or parent, the estate shall be held in trust for the following persons living at the death of the intestate, and in the following order and manner, namely—
 - (i) firstly, on the statutory trusts for the brothers and sisters (whether of full or of half-blood) of the intestate; but if no person takes an absolutely vested interest under such trusts; then

- (ii) secondly, in trust for the grandparents of the intestate and, if more than one survive the intestate, in equal shares; but if there is no member of this class; then
- (iii) thirdly, on the statutory trusts for the uncles and aunts of the intestate, being brothers and sisters (whether of full or of half-blood) of a parent of the intestate;
- (e) in default of a person taking an absolute interest under the foregoing provisions, the estate shall belong to the Government as *bona vacantia*, and in place of a right to escheat; and the Government may (without prejudice to any other powers), out of the whole or apart of the property devolving on it, provide for dependents, whether kindred or not, of the intestate, and other persons for whom the intestate might reasonably have been expected to make provisions.

(2) A husband and wife shall for all purposes of distribution or division under subsection (1) be treated as 2 persons.

45. Statutory trusts in favour of issue and other classes of relatives of intestate – (1) If under this Act the estate of an intestate, or apart thereof, is directed to be held on the statutory trusts for the issue of the intestate, the same shall be held upon the following trusts, namely:

- (a) in trust, in equal shares if more than one, for all or any of the children or a child of the intestate, living at the death of the intestate, who attain full age or marry under that age, and for all or any of the issue living at the death of the intestate who attain full age or marry under that age of a child of the intestate who predeceases the intestate, the issue to take through all degrees, according to their stocks, in equal shares if more than one, the share which their parent would have taken if living at the death of the intestate, and so that no issue shall take whose parent takes an absolutely vested interest:

PROVIDED THAT if a person capable of taking under this paragraph (including this proviso) dies before taking an absolutely vested interest leaving a child or children who shall be living at the expiration of 21 years from the death of the intestate or who shall sooner attain full age or marry under that age, that child or those children shall take, in equal shares if more than one, the share which his, her or their parent would have taken if he or she had not so died:

- (b) the statutory power of advancement, and the statutory provisions which relate to maintenance, education and benefit, and the accumulation of surplus income, shall apply, and when a person becomes entitled to a vested share or interest under the statutory trusts, that person shall be entitled on attaining the age of 18 years or sooner marrying to give a valid receipt for his or her share or interest;
 - (c) the administrator may permit a minor who has a vested or contingent interest in any personal chattels to have the use and enjoyment of the chattels in such manner and subject to such conditions (if any) as the administrator may consider reasonable, and without being liable to account for any consequential loss.
- (2) If the trusts in favour of the issue of the intestate fail by reason of no child or other issue attaining an absolutely vested interest:
- (a) the estate of the intestate and the income thereof and all statutory accumulations, if any, of the income thereof, or so much thereof as may not have been paid or applied under a power affecting the same, shall go, devolve, and be held under the provisions of this Act as if the intestate had died without leaving issue living at the death of the intestate;
 - (b) references in this Act to the intestate “leaving no issue” shall, subject to the provisions of this

section, be construed as “leaving no issue who attain an absolutely vested interest”;

- (c) references in this Act to the intestate “leaving issue” or “leaving a child or other issue” shall, subject to the provisions of this section, be construed as “leaving issue who attain an absolutely vested interest”.

(3) Where under this Act the estate of an intestate or apart thereof is directed to be held on the statutory trusts for a class of the relatives of the intestate, other than issue of the intestate, the same shall be held on trusts corresponding to the statutory trusts for the issue of the intestate as if those trusts were repeated with the substitution of references to the members or members of that class for references to the children or child of the intestate.

46. Application to cases of partial intestacy – (1) If a person dies leaving a will effectively disposing of part of his or her estate, this Part has effect in respect of the part of his or her estate not so disposed of, subject to the provisions of the will and of subsection (2).

(2) If the deceased leaves a husband or wife who acquires a beneficial interest under the will of the deceased, the references in section 44 to a sum of \$5,000 payable to a surviving husband or wife, and to interest on that sum, shall be taken as references to that sum diminished by the value of the beneficial interest at the date of death, and to interest on that sum as so diminished, and, accordingly, where the value exceeds that sum, section 44 has effect as if references to that sum and to interest thereon were omitted.

(3) For the purposes of subsections (1) and (2), the administrator may ascertain and fix the value of the beneficial interest, and no action shall lie against the administrator if he or she distributes the estate in accordance with the value that he or she has honestly and reasonably so fixed.

PART 4 FAMILY PROTECTION

47. Court may grant relief – The Court may grant to a widow, widower, parent, child, or grandchild of a deceased

person who has died leaving estate in Samoa, such relief thereout as to it seems just, if the Court is satisfied (having regard to all the circumstances of the case) that such widow, widower, parent, child, or grandchild is insufficiently provided for.

48. Time for making application – (1) Application for relief under this Part is made by way of motion in accordance with the rules of the Court and is to be made within 12 months after the grant of probate in Samoa.

(2) The Court may on special grounds give leave to make an application for relief at any time after the expiration of the period specified under subsection (1).

49. Order for relief – The Court may order that a specified part or parts or that the whole estate shall bear the amount or extent of a relief granted under this Part.

50. Following of assets – The Court may, if it thinks it just and equitable, order a person having an interest in any assets which formed part of the estate of the deceased person and which had been distributed at any time prior to the hearing of the application for relief, to transfer or pay such interest to the administrator or trustee of the estate, or to the applicant for relief, upon such terms (if any) as in the circumstances the Court thinks fit.

PART 5 MISCELLANEOUS

51. Repeals – (1) The enactments specified in the Second Schedule are repealed as part of the law of Samoa.

(2) (a) and (b) - *These paragraphs amended the Schedule to the Reprint of Statutes Act 1972.*

52. Regulations – The Head of State, acting on the advice of Cabinet, may make regulations as are necessary or expedient for the due administration of this Act.

SCHEDULE**FIRST SCHEDULE
(Section 28)****ORDER TO PUBLIC TRUSTEE TO ADMINISTER**

In the Supreme Court of Samoa

The day of 20...

Upon reading the affidavits of, it is ordered that the Public Trustee shall be administrator of all the real and personal estate of deceased (with the will of..... annexed).

**SECOND SCHEDULE
(Section 51(1))****ENACTMENTS REPEALED**

The Administration Act 1952(NZ)

The General Laws (No.2) Ordinance 1932, section 13

The Samoa Reciprocal Administration Order 1930(NZ)

The Samoa Administration Order 1939(NZ)

REVISION NOTES 2008 – 2020/3 March 2021

This is the official version of this Act as at 3 March 2021.

This Act has been revised by the Legislative Drafting Division from 2008 – 2020/3 March 2021 respectively under the authority of the Attorney General given under the *Revision and Publication of Laws Act 2008*.

The following general revisions have been made:

- (a) Amendments have been made to conform to modern drafting styles and to use modern language as applied in the laws of Samoa.
- (b) Amendments have been made to up-date references to offices, officers and statutes.
- (c) Insertion of the commencement date
- (d) Other minor editing has been done in accordance with the lawful powers of the Attorney General.
 - (i) Sections (5(2), 8(2) 11 and 11(1), 12, 19(1), 23, 26, 37 and 48) amended by dividing into subsections, paragraphs and subparagraphs.
 - (ii) “it shall be the duty” changed to “shall”

- (iii) “shall be deemed” changed to “is taken”
- (iv) “shall have the power” changed to “has the power”
- (v) “Notwithstanding” changed to “Despite”
- (vi) “said” deleted
- (vii) “every” and “any” changed to “a” or “an” where appropriate
- (viii) “from time to time”, “for the time being”, “hereby” and “the provisions of” are deleted
- (ix) “shall have” changed to “has”
- (x) “pursuant to” changed to “under”
- (xi) “etc.” deleted and inserted complete sentences
- (xii) Numbers in words changed to figures
- (xiii) Arrangement of provisions made consistent with the text
- (xiv) Parts numbers changed from Roman to Decimal numbers

There were no amendments made to this Act since the publication of the *Consolidated and Revised Statutes of Samoa 2007*.



Savalenoa Mareva Betham-Annandale
Attorney General of Samoa

*This Act is administered by
the Ministry of Justice and Courts Administration.*